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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 ERIC KLOPMAN-BAERSELMAN, as  
10 Personal Representative for the Estate of  
11 RUDIE KLOPMAN-BAERSELMAN,  
12 deceased,

13 Plaintiff,

14 v.

15 AIR & LIQUID SYSTEMS  
16 CORPORATION, et al.,

17 Defendants.

CASE 3:18-cv-05536-RJB

ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL DCO LLC'S  
CORPORATE REPRESENTATIVE  
DEPOSITION

18 THIS MATTER comes before the Court on Plaintiff's Motion to Compel DCo LLC's  
19 ("DCo") Corporate Representative Deposition. Dkt. 405. The Court has considered the motion,  
20 all materials filed in support of and in opposition to the motion, and the remainder of the record  
21 herein, and it is fully advised. Oral argument is unnecessary to decide the motion.

22 For the reasons set forth below, Plaintiff's motion should be denied.

23 **I. BACKGROUND**

24 This is an asbestos case. Plaintiff claims that Rudie Klopman-Baerselman ("Decedent")  
was exposed to asbestos from Victor brand gaskets, for which DCo is responsible. Dkt. 405.  
Plaintiff alleges that amosite asbestos was found in Decedent's lung tissue. Dkt. 405, at 2-3.

1 On September 27, 2019, Plaintiff took the FRCP 30(b)(6) deposition of DCo's corporate  
2 representative, Marcella Duncan ("Ms. Duncan"). Dkts. 405, at 3; and 406, at 70. Plaintiff's  
3 notice of deposition requested, in part, production of "[a]ll writings in Victor's possession,  
4 custody, or control that indicate amosite asbestos was an ingredient in Victor's gaskets." Dkt.  
5 406, at 158.

6 Plaintiff argues that Ms. Duncan "was woefully unprepared to testify at her deposition."  
7 Dkt. 405, at 3. Ms. Duncan was asked about sales or purchase records related to an alleged 23  
8 ton purchase of amosite fiber in 1955 by Victor, possibly related to amosite fiber studies. Dkt.  
9 406, at 94. Ms. Duncan answered that she had not searched for such a document and testified that  
10 Victor never sold amosite gaskets. Dkt. 406, at 94. When asked to which documents she had  
11 relied in forming her opinion, she stated, "It's the lack of documents. And that would be in any  
12 of the gaskets that were specified to use as amosite-containing materials, no engineering change,  
13 changes, for any gaskets to use amosite-containing materials, no sales records of amosite gaskets  
14 being sold. So it's the absence of records, not the finding of records." Dkt. 406, at 95.

15 Plaintiff filed the instant motion to compel discovery of DCo's documents regarding  
16 amosite. Dkt. 405. Plaintiff argues that DCo's responses were evasive and incomplete, and it  
17 should be compelled to produce all responsive documents. Dkt. 405, at 4–5.

18 DCo filed an oppositional response. Dkt. 443. DCo argues that Ms. Duncan was prepared  
19 for the deposition and that it had properly made its documents, kept in the ordinary course of  
20 business, available to Plaintiff pursuant to FRCP 34. Dkt. 443. DCo further describes Ms.  
21 Duncan's preparation efforts and claims that it made its documents available to Plaintiff because  
22 of how broad Plaintiff's document requests were. Dkt. 443, at 5–9.

1 Plaintiff replied in support of its motion, arguing, in part, that DCo failed to timely object  
2 to Plaintiff's discovery request. Dkt. 460.

## 3 II. DISCUSSION

### 4 A. STANDARDS ON DISCOVERY

5 Under the Federal Rules of Civil Procedure, parties may generally obtain discovery  
6 regarding any non-privileged matter that is relevant to any party's claim or defense and  
7 proportional to the needs of the case. Fed. R. Civ. P. 26. Information need not be admissible at  
8 trial to be discoverable. Fed. R. Civ. P. 26(b)(1). During discovery, a party may depose a public  
9 or private corporation, or a governmental agency, which must then designate one or more  
10 officers to testify on its behalf, as well as the matters on which each designated person will  
11 testify. Fed. R. Civ. P. 30(b)(6). The person designated must testify about information known or  
12 reasonably available to the organization. Fed. R. Civ. P. 30(b)(6).

13 FRCP 37(a)(1) provides that, in part:

14 On notice to other parties and all affected persons, a party may  
15 move for an order compelling disclosure or discovery. The motion  
16 must include a certification that the movant has in good faith  
17 conferred or attempted to confer with the person or party failing to  
make disclosure or discovery in an effort to obtain it without court  
action.

18 FRCP 37(a)(3)(A)–(B) provides that:

19 (A) *To Compel Disclosure*. If a party fails to make a disclosure  
20 required by Rule 26(a), any other party may move to compel  
disclosure and for appropriate sanctions.

21 (B) *To Compel a Discovery Response*. A Party seeking discovery  
22 may move for an order compelling an answer, designation,  
production, or inspection.

23 Courts are given broad discretion to control discovery under FRCP 37, including  
24 “particularly wide latitude ... to issue sanctions under FRCP 37(c)(1)[.]” *Ollier v. Sweetwater*

1 *Union High Sch. Dist.*, 768 F.3d 843, 859 (9th Cir. 2014) (quoting *Yeti by Molly, Ltd. v. Deckers*  
2 *Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001)).

### 3 **B. MEET AND CONFER REQUIREMENTS**

4 Plaintiff has certified that the parties met and conferred on October 4, 2019, but were  
5 unable to resolve this dispute. Therefore, Plaintiff's motion satisfies the applicable meet and  
6 confer requirements.

### 7 **C. MOTION TO COMPEL**

8 Plaintiff's motion is without merit. Ms. Duncan's preparation efforts for the deposition  
9 appear to have been significant, and she appeared reasonably knowledgeable and prepared at  
10 deposition. *See* Dkts. 443, at 8–9; and 406, at 94. Plaintiff requests documents that Ms. Duncan's  
11 testimony suggests may not even exist. *See* Dkt. 406, at 94. Moreover, DCo has made its  
12 documents available for inspection and copying at DCo's document repository in conformity  
13 with FRCP 34. *See* Dkt. 443, at 5–8; Fed. R. Civ. P. 34 ("a party must produce documents as  
14 they are kept in the usual course of business or must organize and label them to correspond to the  
15 categories in the request").

16 Therefore, Plaintiff's motion to compel should be denied.

### 17 **III. ORDER**

18 Therefore, it is hereby **ORDERED** that:

- 19 • Plaintiff's Motion to Compel DCo LLC's Corporate Representative Deposition  
20 (Dkt. 405) is **DENIED**.

21 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
22 to any party appearing *pro se* at said party's last known address.  
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2 Dated this 6<sup>th</sup> day of November, 2019.

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5 ROBERT J. BRYAN  
6 United States District Judge  
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